



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/986,696	12/08/97	JEJELOWO M	970001

IM71/0401  
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EXAMINER  
SMITH, E

ART UNIT	PAPER NUMBER
1713	

DATE MAILED: 04/01/99 7

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

986696

Applicant(s)

Jejelowo et al

Examiner

F S

Group Art Unit

1713

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-50 is/are pending in the application.
- Of the above claim(s) 1-9, 33-50 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 10-32 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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15. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-9, drawn to catalyst, classified in Class 502, subclass 103.

II. Claims 10-33, drawn to process, classified in Class 526, subclass 160.

III. Claims 33-50, drawn to polymer, classified in Class 526, subclass 352.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make a materially different product such as one not having the characteristics of the claimed products.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a

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materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as hydrogenation, isomerization and alkylation process.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Jaimes Sher on March 3, 1999 a provisional election was made with traverse to prosecute the invention of Group II, claims 10-32. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-9 and 33-50 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

✓16. Claims 10-12, 16 and 17 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Turner et al. (U.S. 5,767,208).

Note Experiment 1.9.

17. Claims 10-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheruvu et al. (U.S. 5,608,019).

It would be obvious to use the hafnium analogs of the zirconocenes used in the process of the reference, e.g., in the Example, since (1) the reference generically teaches their use

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(column 10, lines 13-28) and (2) one of ordinary skill in the art would expect the analogous hafnocene compounds to produce satisfactory results in the process of the reference.

The comparative data is not convincing of the unobviousness of the claimed process.

First of all, no probative weight can be given to the data since the comparative invention runs are not back to back runs, i.e., the only difference being the metallocenes.

Secondly, no probative weight can be given to the data since the closest prior art is the catalyst of the reference and not that disclosed in the specification.

Finally, the data of record purporting to establish unexpected results is not commensurate in scope with the claims in which the data is offered to support, i.e., scope of metallocenes, activators, relative ratio of activators to metallocenes, method of preparing the catalyst, monomers employed and polymerization conditions. In re Greenfield et al. 197 USPQ 227 and In re Grasselli et al. 218 USPQ 769.

18. Claims 10-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jejelowo et al: (U.S. 5,281,679) in view of Cheruvu et al. and Tsutsui et al. (35 U.S.C. § 5,714,426).

It would be obvious to use the hafnium analogs of zirconocenes in the process of the primary reference because (1) the reference teaches their use (column 7, lines 42-43), (2)

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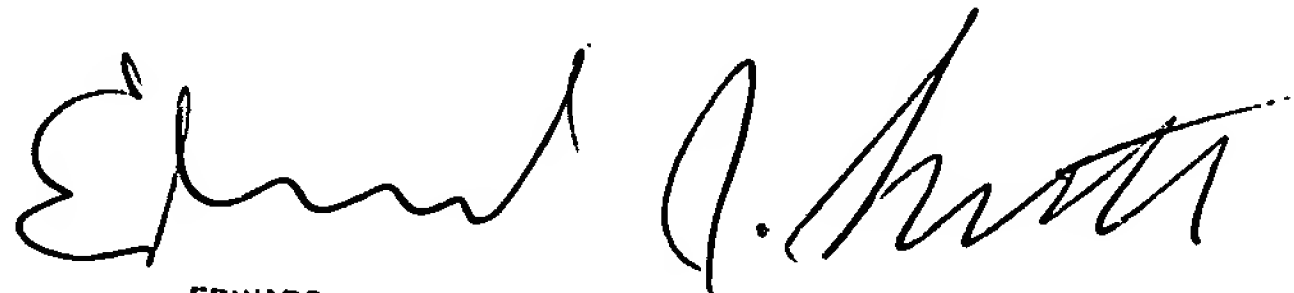
Tsutsui et al. teach that hafnocenes are advantageously used in producing olefin polymers, (3) Cheruvu et al. teaches the use of closely related hafnium species and (4) one of ordinary skill in the art would believe that the analogous hafnium compounds would produce satisfactory results in the process of the primary reference.

The comparative data is not convincing of the unobviousness of the claimed process for the reasons recited in paragraph 17 above.

EJSmith:cdc

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March 25, 1999



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